

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: ARC AIRBAG INFLATORS
PRODUCTS LIABILITY
LITIGATION

MDL No. 3051
Case No. 1:22-md-03051-ELR

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR
ORAL ARGUMENT ON
MOTIONS TO DISMISS**

Defendants do not oppose Plaintiffs' request for oral argument [ECF No. 252].¹ However, Defendants submit that the issues to be argued are:

1. Whether Plaintiffs have standing to bring claims on behalf of the proposed "nationwide" class;
2. Whether Plaintiffs can pursue claims in states where they did not purchase their vehicles;
3. For their claims sounding in fraud, whether Plaintiffs allege facts with the requisite particularity under Federal Rule of Civil Procedure 9(b);
4. Whether Plaintiffs plausibly allege that Defendants had knowledge of the alleged defect;
5. Whether Plaintiffs plausibly allege that Defendants had a duty to disclose the alleged defect and if so, whether Defendants breached any such duty;

¹ Consistent with the local rules and this Court's standing general order, Defendants engaged in the meet and confer process with Plaintiffs about the request for argument and scoping of issues, with the intention that the parties might reach agreement and present the request jointly to the Court. Plaintiffs, however, filed their request unilaterally.

6. Whether Plaintiffs plausibly allege the existence of any binding express or implied warranties between Plaintiffs or members of the putative classes, on one hand, and Defendants, on the other; and if so, whether Plaintiffs plead sufficient facts to demonstrate a breach of any such warranties;
7. Whether Plaintiffs' claims for fraudulent concealment and/or violations of state consumer protection statutes in certain states are barred based on the economic loss doctrine;
8. Whether Plaintiffs' claims that sound in fraud are time-barred because the applicable limitations period has run and no tolling doctrine applies;
9. Whether personal jurisdiction is lacking in certain transferred cases;
10. Whether Plaintiffs' complaint is a shotgun pleading;
11. Whether Plaintiffs have properly asserted standing to sue the Tier 1 Suppliers.

Defendants would be pleased to present argument on any and all issues covered in the briefing or raised by the Court.

Respectfully Submitted,

/s/ Michael B. Shortnacy

Livia M. Kiser
Susan V. Vargas
KING & SPALDING LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071
Telephone: 213.443.4355
Facsimile: 213.443.4310
lkiser@kslaw.com
svargas@kslaw.com

Michael B. Shortnacy
SHOOK, HARDY & BACON L.L.P.
Michael B. Shortnacy
2049 Century Park East, Suite 3000
Los Angeles, CA 90067
Telephone: 424.324.3494
Facsimile: 424.204.9093
mshortnacy@shb.com

*COUNSEL FOR DEFENDANTS AUDI
OF AMERICA, LLC AND
VOLKSWAGEN GROUP OF
AMERICA, INC.*

/s/ April N. Ross

CROWELL & MORING LLP
April N. Ross
Mohamed Awan
Emily Tucker
1001 Pennsylvania Avenue NW
Washington, D.C. 20004
Telephone: (202) 624-2500
aross@crowell.com
mawan@crowell.com
etucker@crowell.com

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC
Linda Ann Klein
3414 Peachtree Road, Northeast
Monarch Plaza, Suite 1500
Atlanta, GA 30326-1164
404-577-6000
Email: lklein@bakerdonelson.com

Counsel for General Motors LLC

/s/ Eric Y. Kizirian

LEWIS BRISBOIS BISGAARD
& SMITH, LLP

Eric Y. Kizirian

Zourik Zarifian

633 West 5th Street, Suite 4000

Los Angeles, CA 90071

Telephone: (213) 250-1800

Facsimile: (213) 250-7900

eric.Kizirian@lewisbrisbois.com

zourik.Zarifian@lewisbrisbois.com

*COUNSEL FOR DEFENDANTS
BMW OF NORTH AMERICA,
LLC AND BMW
MANUFACTURING CO., LLC.*

/s/ David S. Killoran

DYKEMA GOSSETT LLP

David S. Killoran

444 S. Flower, Suite 2200

Los Angeles, CA 90071

(213) 457-1800

dkilloran@dykema.com

DYKEMA GOSSETT PLLC

Eric Tew

1301 K Street NW

Suite 1100 West

Washington, D.C. 20005

(202) 906-8600

etew@dykema.com

*COUNSEL FOR DEFENDANT
PORSCHE CARS NORTH AMERICA,
INC.*

/s/ Stephen A. D'Aunoy

THOMPSON COBURN LLP
Stephen A. D'Aunoy
Thomas L. Azar, Jr.
One US Bank Plaza
St. Louis, MO 63101
(314) 552-6000
sdaunoy@thompsoncoburn.com
tazar@thompsoncoburn.com

KLEIN THOMAS LEE & FRESARD
Fred Fresard
Ian Edwards
Lauren Fibel
101 W. Big Beaver Road, Ste. 1400
Troy, MI 48084
Phone: (248) 509-9270
Fred.Fresard@kleinthomaslaw.com
Ian.Edwards@kleinthomaslaw.com
Lauren.Fibel@kleinthomaslaw.com

*COUNSEL FOR DEFENDANT FCA
US LLC*

/s/ Perry W. Miles IV

MCGUIREWOODS LLP
Perry W. Miles IV
Brian D. Schmalzbach
800 East Canal Street
Richmond, VA 23219
Tel: (804) 775-1000
Fax: (804) 775-1061
pmiles@mcguirewoods.com
bschmalzbach@mcguirewoods.com

Lee K. Royster
201 North Tryon Street

Suite 3000
Charlotte, NC 28202
Tel: (704)-343-2000
Fax: (704) 343-2300
lroyster@mcguirewoods.com

WATSON SPENCE LLP
Michael R. Boorman
Phillip A. Henderson
999 Peachtree St NE
Suite 1130
Atlanta, GA 30309
Tel: (678) 433-6586
Fax: (229) 436-6358
mboorman@watsonspence.com
phenderson@watsonspence.com

*COUNSEL FOR DEFENDANT FORD
MOTOR COMPANY*

/s/ Eric S. Mattson

SIDLEY AUSTIN LLP
Eric S. Mattson
Kendra Stead
Ankur Shingal
One South Dearborn St.
Chicago, IL 60603
Telephone: (312) 853-7000
Fax: (312) 853-7036
emattson@sidley.com
kstead@sidley.com
ashingal@sidley.com

Ellyce R. Cooper
1999 Avenue of the Stars
17th Floor
Los Angeles, CA 90067
Telephone: (213) 896-6000

Fax: (213) 896-6600
ecooper@sidley.com

BOWMAN AND BROOKE
Joel H. Smith
Patrick J. Cleary
1441 Main St., Ste. 1200
Columbia, SC 29201
Telephone: (803) 726-7422
Fax: (803) 726-7421
Joel.smith@bowmanandbrooke.com
patrick.cleary@bowmanandbrooke.com

DYKEMA GOSSETT, PLLC-MI
James P. Feeney
Suite # 300
39577 Woodward Avenue
Bloomfield Hills, MI 48304
Telephone: (248) 203-0841
Fax: (855) 243-9885
Email: jfeeney@dykema.com

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Anita Wallace Thomas
Suite 1700
201 17th Street, N.W.
Atlanta, GA 30363
Telephone: (404) 322-6000
Fax: (404) 322-6050
anita.thomas@nelsonmullins.com

*COUNSEL FOR DEFENDANTS KIA
AMERICA, INC. AND HYUNDAI MOTOR
AMERICA*

/s/ Michael D. Leffel
FOLEY & LARDNER LLP
Michael D. Leffel

150 East Gilman Street, Suite 5000
Madison, WI 53703
Telephone: (608) 257-5035
Facsimile: (608) 258-4258
mleffel@foley.com

*COUNSEL FOR DEFENDANT ARC
AUTOMOTIVE, INC.*

/s/ Joseph G. Petrosinelli

Joseph G. Petrosinelli
J. Liat Rome
Jami M. King
WILLIAMS AND CONNOLLY LLP
680 Maine Ave., S.W.
Washington, DC 20024
Telephone: (202) 434-5000
Facsimile: (202) 434-5029
jpetrosinelli@wc.com
jrome@wc.com
jking@wc.com

Cari K. Dawson
Georgia Bar No. 213490
Kara F. Kennedy
Georgia Bar No. 926006
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309
Phone: (404) 881-7000
Fax: (404) 881-7777
cari.dawson@alston.com
kara.kennedy@alston.com

*Counsel for Defendants Autoliv, Inc. and
Autoliv ASP, Inc.*

/s/ Benjamin W. Jeffers

HICKEY HAUCK BISHOFF JEFFERS &
SEABOLT, PLLC

Benjamin W. Jeffers

Benjamin I. Shipper

Andrew M. Gonyea

I Woodward Avenue, Suite 2000

Detroit, MI 48226

Telephone: (313) 964-8600

Facsimile: (313) 964-8601

bjeffers@hhbjs.com

bshipper@hhbjs.com

agonyea@hhbjs.com

*Counsel for Defendant Key Safety Systems,
Inc. d/b/a Joyson Safety Systems*

/s/ Sean M. Berkowitz

Sean M. Berkowitz

Arthur F. Foerster

Johanna Spellman

LATHAM & WATKINS LLP

330 North Wabash Street, Suite 2800

Chicago, IL 60611

Telephone: 312.876.7700

Facsimile: 312.993.9767

Sean P. McNally

TROUTMAN PEPPER HAMILTON

SANDER LLP

4000 Town Center, Suite 1800

Southfield, MI 48075

Telephone: 248.359.7317

Facsimile: 248.359.7700

Lindsey B. Mann

TROUTMAN PEPPER HAMILTON

SANDER LLP
600 Peachtree Street, Suite 3000
Atlanta, GA 30308
Telephone: 404.885.2743
Facsimile: 404.962.6538

*Counsel for ZF Active Safety and Electronics
US LLC, ZF Passive Safety Systems US Inc.,
ZF Automotive US Inc., and ZF TRW
Automotive Holdings Corp.*

/s/ Joseph Weinstein

Joseph Weinstein
Ohio Bar No: 23504
Roger M. Gold
Ohio Bar No: 55905
Squire Patton Boggs (US) LLP
1000 Key Tower
127 Public Square
Cleveland, OH 44114-1304
Telephone: (216) 479-8500
Facsimile: (216) 479-8780
Email: joe.weinstein@squirepb.com
roger.gold@squirepb.com

Dara D. Mann
Georgia Bar No. 469065
Deborah Lempogo
Georgia Bar No. 277943
Squire Patton Boggs (US) LLP
1201 W. Peachtree Street NW,
Suite 3150
Atlanta, GA 30309
Telephone: (678) 272-3222
Facsimile: (678) 272-3211
Email: dara.mann@squirepb.com
deborah.lempogo@squirepb.com

Daniel C. Harkins
NY Bar No. 5179312
Squire Patton Boggs (US) LLP
1211 Avenue of the Americas, Fl. 26
New York, NY 10036-8705
Telephone: (212) 872-9890
Facsimile: (212) 872-9815
Email: daniel.harkins@squirepb.com

*Counsel for Toyoda Gosei North America
Corporation*

CERTIFICATION

Pursuant to Civil Local Rule 7.1, the undersigned counsel certifies this motion has been prepared with one of the font and point selections approved by the Court in Civil Local Rule 5.1.

/s/ Michael B. Shortnacy
Michael B. Shortnacy

CERTIFICATE OF SERVICE

On February 23, 2024, I hereby certify that I have caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to all counsel of record.

/s/ Michael B. Shortnacy
Michael B. Shortnacy